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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,899	11/21/2003	Jeffrey J. Piotrowski	740883-180	7384
22204	7590	03/05/2008		
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER KARDOS, NEIL R	
			ART UNIT 3623	PAPER NUMBER
			MAIL DATE 03/05/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/717,899	<b>Applicant(s)</b> PIOTROWSKI ET AL.	
	<b>Examiner</b> Neil R. Kardos	<b>Art Unit</b> 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/4/04</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. This is a non-final first Office action on the merits. Currently, claims 1-20 are pending.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1 & 10: Claims 1 and 10 recite the limitation "wherein the spectral information... is obtained in a non-destructive manner." This limitation is not sufficiently described in Applicant's disclosure in order to allow one of ordinary skill in the art to make or use the invention without undue experimentation. For example, paragraph 24 states that the spectral information can be obtained through a sealed bottle containing the beverage, taking into account factors such as bottle color. However, Applicant fails to describe a technique that could be used to obtain spectral information relating to a beverage contained in a sealed container. Partly due to the wide variety of container and liquid colorations, one of ordinary skill in the art would require an excessive amount of experimentation to figure out how to gather spectral data from any one of such liquids inside such a container. As an extreme example, Applicant's disclosure

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does not contain any guidance on how the spectral information for a clear liquid could be obtained through a black container.

Claims 3 & 12: Claims 3 and 12 recite the limitation "wherein the spectral information includes at least one of visible, infrared, and near infrared spectral information." This limitation is not sufficiently described in Applicant's disclosure in order to allow one of ordinary skill in the art to make or use the invention without undue experimentation. For example, paragraph 23 merely states that various wavelengths can be used to obtain spectral information. Paragraph 33 describes the characteristic wavelengths of visible, infrared, and near infrared spectrums. However, Applicant fails to describe a technique that could be used to obtain spectral information using these various wavelengths.

The dependent claims 2, 4-9, 11, and 13-20 are also rejected because they fail to add substantial limitations to remedy the deficiencies of the claims that they depend from.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**5. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 1 & 10: Claims 1 and 10 recite the limitation "wherein... the sample is obtained in a non-destructive manner." Examiner believes that this limitation means that the sample is obtained without opening a beverage's container. However, the use of the term "non-destructive" could be reasonably interpreted to mean that the beverage itself is not destroyed

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upon gathering its spectral information. Given that claim limitations are to be interpreted in the broadest reasonable manner, any art that uses either of these interpretations will be sufficient to reject this claim limitation.

The dependent claims 2-9 and 11-20 are also rejected because they fail to add substantial limitations to remedy the deficiencies of the claims that they depend from.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-4, 10-13, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent number 4,490,042 to Wyatt (“Wyatt”).**

Claims 1 & 10: Wyatt discloses a computer-implemented method and a system with means for (see figure 1) aiding a consumer in choosing a beverage based upon personal preferences of the consumer, comprising:

- obtaining spectral information of an inventory of beverages (see column 1: lines 42-64 and column 2: lines 22-41, disclosing obtaining spectral information for a sample of wine; column 3: table I, disclosing obtaining spectral information for a variety of wines at a store; column 4: lines 62-66, disclosing selecting wines based on a catalog of properties associated with each one);

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- obtaining spectral information of a sample of a beverage (see column 1: lines 42-64 and column 2: lines 22-41); and
- comparing the spectral information of the sample with that of the inventory to determine a beverage from the inventory that is similar to the sample (see column 4: lines 62-66; column 2: lines 14-15),
- wherein the spectral information for at least one of the inventory and the sample is obtained in a non-destructive manner (see column 1: lines 42-64 and column 2: lines 22-41, disclosing obtaining spectral information for a sample of wine which is not “destroyed” upon sampling; see 112 rejection above for interpretation of claim limitations).

Claims 2 & 11: Wyatt discloses displaying the results of the comparing step to a consumer, wherein the sample corresponds to a beverage preferred by the consumer (see column 4: lines 62-66, disclosing wherein the consumer identifies from a catalog properties of wines corresponding to his preferences).

Claims 3 & 12: Wyatt discloses wherein the spectral information includes at least one of visible, infrared, and near infrared spectral information (see column 2: lines 42-51, disclosing taking measurements using various wavelengths).

Claims 4 & 13: Wyatt discloses wherein the comparing step includes performing statistical analysis on the spectral information for at least one of the inventory and the sample (see column 4: lines 56-62, disclosing averaging lights patterns and calculating their fluctuations).

Claim 19: Wyatt discloses wherein the means for obtaining the spectral information for the inventory, the means for obtaining the spectral information of the sample, and the means for comparing the spectral information comprise devices of a computer system (see figure 1; column 2: lines 22-41).

Claim 20: Wyatt discloses wherein the means for obtaining the spectral information for the inventory, the means for obtaining the spectral information of the sample, and the means for comparing the spectral information comprise computer-readable instructions stored on a computer readable medium (see figure 1; column 2: lines 22-41).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**9. Claims 5-9 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyatt in view of U.S. patent number 5,200,909 to Juergens (“Juergens”).**

Claims 5 & 14: Wyatt does not explicitly disclose the limitations of these claims.

Juergens teaches wherein the displaying step includes displaying a list of beverages from the inventory to the consumer that are similar to the beverage preferred by the consumer (see figure 13: item 600; column 9: lines 28-41, disclosing an interactive computer program that assists consumers in identifying wines with desired characteristics).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to display only the wines that are of interest to a consumer as taught by Juergens when presenting the consumer with a catalog as disclosed by Wyatt. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiency gained by providing consumers with “objective, understandable information necessary to make a confident, informed wine purchase decision” (Juergens: column 1: lines 50-54).

Claims 6 & 15: Wyatt does not explicitly disclose the limitations of these claims.

Juergens teaches providing the consumer with at least one of sale information and stocking information for a beverage in the displayed results (see column 9: lines 33-36, disclosing displaying results within a given price range that are in stock).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to display only wines that are in stock and within a customer specified price range as taught by Juergens when presenting the consumer with a catalog as disclosed by Wyatt. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiency gained by providing consumers with “objective, understandable information necessary to make a confident, informed wine purchase decision” (Juergens: column 1: lines 50-54).

Claims 7 & 16: Wyatt does not explicitly disclose the limitations of these claims.

Juergens teaches inputting from the consumer search criteria to narrow the displayed results (see column 9: lines 33-36; column 9: lines 42-55, disclosing customer specification of wine characteristics; figures 8-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to display only wines meeting customer specifications as taught by Juergens when



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presenting the consumer with a catalog as disclosed by Wyatt. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiency gained by providing consumers with “objective, understandable information necessary to make a confident, informed wine purchase decision” (Juergens: column 1: lines 50-54).

Claims 8 & 17: Wyatt does not explicitly disclose the limitations of these claims.

Juergens teaches wherein the search criteria includes at least one of price information and beverage type (see column 9: lines 33-36, disclosing a customer-specified price range; column 9: lines 42-55, disclosing customer-specified wine characteristics, origins, and grape type; column 9: line 60 through column 10: line 32, disclosing customer-specified wine color, country preference, and grape preference; figures 8-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to display only wines meeting customer specifications as taught by Juergens when presenting the consumer with a catalog as disclosed by Wyatt. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiency gained by providing consumers with “objective, understandable information necessary to make a confident, informed wine purchase decision” (Juergens: column 1: lines 50-54).

Claims 9 & 18: Wyatt does not explicitly disclose the limitations of these claims.

Juergens teaches categorizing the sample into a category of the inventory (see column 11: lines 22-27, disclosing storing an inventory of wines in a database; column 11: lines 56-61, disclosing storing wine characteristics as part of an inventory wine database; column 12: lines 35-38, disclosing placing a wine in inventory; figure 10).

*Additional Prior Art*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. patent number 4,540,282 to Landa et al, directed to optically analyzing a sample.

U.S. patent number 5,489,980 to Anthony, directed to analysis of the composition of samples.

U.S. patent number 6,118,526 to Hidalgo et al, directed to measuring light transmittance.

U.S. patent number 6,370,513 to Kolawa et al, directed to automated selection, organization, and recommendation of items.

U.S. patent number 6,759,072 to Gutwein et al, directed to utilizing delayed dilution, mixing, and filtration for providing customized beverages on demand.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil R. Kardos whose telephone number is (571) 270-3443. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neil R. Kardos  
Examiner  
Art Unit 3623

NRK  
2/25/08

/Beth Van Doren/  
Primary Examiner, Art Unit 3623